

VZCZCXYZ0002
RR RUEHWEB

DE RUEHSJ #1140/01 3492004
ZNR UUUUU ZZH
R 152003Z DEC 09
FM AMEMBASSY SAN JOSE
TO RUEHC/SECSTATE WASHDC 0119
INFO RUEHSJ/AMEMBASSY SAN JOSE

UNCLAS SAN JOSE 001140

SIPDIS
STATE PASS TO OPIC
STATE PASS TO USTR FOR DOLIVER AND AMALITO
STATE PASS TO EXIMBANK FOR XCREQUE
DEPT FOR WHA/CEN, WHA/EPSC:SGARRO, EEB/TTP/BT:RMANOGUE AND DGROUT

E.O. 12958: N/A
TAGS: [ECON](#) [ETRD](#) [EINV](#) [PREL](#) [PGOV](#) [CS](#)
SUBJECT: Costa Rica: National Trade Estimate

REF: 09 STATE 105978; 09 SANJOSE 954

TRADE SUMMARY

[1](#)1. U.S. goods trade surplus with Costa Rica was \$1.7 billion in 2008, an increase of \$1.1 billion from \$639 million in 2007. U.S. goods exports in 2008 were \$5.7 billion, up 24.0 percent. Corresponding U.S. imports from Costa Rica were \$3.9 billion, down 0.1 percent. Costa Rica is currently the 38th largest export market for U.S. goods.

[1](#)2. The stock of U.S. foreign direct investment (FDI) in Costa Rica was \$3.5 billion in 2007 (latest data available), up from \$3.3 billion in 2006. U.S. FDI in Costa Rica is concentrated largely in the manufacturing and wholesale trade sectors.

IMPORT POLICIES

Free Trade Agreement

[1](#)3. On August 5, 2004, the United States signed the United States -Central America-Dominican Republic Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

[1](#)4. The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

¶5. In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States will provide reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

¶6. As a member of the Central American Common Market, Costa Rica agreed in 1995 to harmonize its external tariff on most items at a maximum of 15 percent with some exceptions.

¶7. Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Costa Rica duty free, with the remaining tariffs on these goods phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Costa Rica duty-free and quota-free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

¶8. Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Costa Rica duty free. Costa Rica will eliminate its remaining tariffs on virtually all agricultural products by 2020 (2022 for chicken leg quarters and 2025 for rice and dairy products). For certain agricultural products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Costa Rica will liberalize trade in fresh potatoes and onions through expansion of a TRQ, rather than by tariff reductions.

Nontariff Measures

¶9. Under the CAFTA-DR, Costa Rica committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Costa Rica also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods.

¶10. The establishment of the Information Technology Customs Control (TICA) system has significantly improved a traditionally complex and bureaucratic import process. Under the TICA system, the Costa Rican customs authority has changed its focus from the verification of goods to the verification of processes and data. Customs

officials now have up to four years to review the accuracy of import declarations, which allows customs to facilitate the free flow of goods while gathering necessary documentation. Costa Rica launched the TICA system in mid 2007 for imported goods in all ports of entry. For exported goods, Costa Rica initiated TICA in early 2009 in all ports. The Free Trade Zone and "perfection of goods" regimes are the only import/export categories that are not yet covered under TICA and they are scheduled to be included during the first half of 2010.

----- --
STANDARDS, TESTING, LABELING, AND CERTIFICATION
----- --

¶11. Please see San Jose 954 for our submission on Standards, Testing, Labeling, and Certification and Sanitary and Phytosanitary Measures.

----- --
GOVERNMENT PROCUREMENT
----- --

¶12. The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S.

suppliers are permitted to bid on procurements of most Costa Rican government entities, including key ministries and state-owned enterprises, on the same basis as Costa Rican suppliers. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties. Costa Rica is not a signatory to the WTO Agreement on Government Procurement.

----- --
EXPORT SUBSIDIES
----- --

¶13. Tax holidays are available for investors in free trade zones, unless tax credits are available in an investor's home country for taxes paid in Costa Rica.

¶14. Under the CAFTA-DR, Costa Rica may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (e.g., the export of a given level or percentage of goods).

----- --
INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION
----- --

¶15. The country's record of protecting IPR is mixed primarily due to varying levels of commitment by different institutions and branches of the government. The Attorney General of Costa Rica (a semi-autonomous member of the Judicial Branch) generally does not prosecute IPR violations. He asserts that he cannot allocate scarce resources to IPR issues and places higher priority on prosecuting other types of criminal behavior such as organized crime. The Executive Branch has generally been strongly supportive of IPR enforcement. Yet neither that focus nor the training of judges and prosecutors on IPR laws has produced significant improvements in the prosecution of IPR crimes. The Executive Branch has failed to obtain the Legislative Assembly's approval of the final IPR-related CAFTA-DR law that it committed to have in place by the end of 2009.

¶16. In terms of process, Costa Rica has taken significant steps in recent years to improve the protection and enforcement of IPR. Costa Rica strengthened its legal framework for the protection of IPR by substantially modifying its IPR laws and regulations in preparation for the entry into force of the CAFTA-DR. The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards, as well as with emerging international standards, of protection and enforcement of IPR. Such improvements include state-of-the-art protections for patents, trademarks, undisclosed test, and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos and further deterrence of piracy and counterfeiting.

¶17. The government increased the budgets of the patent and trademark office and the copyright office and is currently building a new Intellectual Property building for those offices on the grounds of the National Registry. The copyright office tripled in personnel from 2006 and upgraded equipment. Patent registration continues to experience a considerable backlog of applications waiting for a patent examiner, although the number of patents examined increased through the use of contracted examiners. The patent office plans to continue and expand the use of contracted examiners while also contracting five in-house patent examiners with industry-competitive salaries. These positions were posted

for hiring in 2008, but the National Registry has not filled the positions due to pending confirmations for the position salary levels. The number of patents registered annually during the last several years significantly increased:

¶18. Attribute	2006	2009
Industrial Registry Payroll	26	60
Registered Patents	9	84 (through Nov 30)
Registered Trademarks	9,191	10,282 (through Nov 30)

¶19. As part of the CAFTA-DR entry into force, Costa Rica agreed to institute a special prosecutor's office in the Office of the Attorney General. The Attorney General designated a person to specialize in IPR crimes. However, the position has not evolved to function as a separate entity or office outside of the Miscellaneous Crimes office. The government restarted the previously dormant IP Interdisciplinary Commission which the Ministry of Justice leads and consists of representatives from the Ministries of Foreign Trade, Public Security, and Science and Technology, National Registry of Copyrights and Trademarks, Industrial Property Registry, Customs, Office of the Attorney General, and the Judicial School. The Commission operated

informally until December 1, when the president issued a decree formally establishing it.

SERVICES BARRIERS

¶20. Under the CAFTA-DR, Costa Rica granted U.S. services suppliers substantial access to its services market, including financial services. Costa Rica committed to provide improved access in sectors like express delivery and to grant new access in certain professional services that previously had been reserved exclusively to Costa Rican nationals. Costa Rica also agreed that portfolio managers in the United States would be able to provide portfolio management services to both mutual funds and pension funds in Costa Rica. Mutual funds originating in the U.S. are reportedly available now in Costa Rica but are receiving little investment capital; tax issues and unfavorable perceptions of U.S. markets appear to have made such mutual funds an unattractive investment.

¶21. In 2008 and 2009 Costa Rica made significant changes in its legal and regulatory framework intended to implement its CAFTA-DR commitments on insurance and telecommunications.

The newly-established insurance regulator SUGESE (still operating under the wing of the Pensions Superintendent SUPEN), authorized six insurance companies to compete with the former monopoly state insurance provider and will accept applications from other interested insurers. These new competitors are expected to start operating in the market in January 2010. U.S. insurance suppliers are now permitted to provide most forms of insurance, with the remainder of the market to be opened by 2011. U.S. insurance suppliers are able to operate as a branch or a subsidiary.

¶22. Under the CAFTA-DR, Costa Rica agreed to open three important segments of its telecommunications market: private network services, Internet services, and mobile wireless services. Previously, Costa Rica's entire telecommunications market also was reserved for the state monopoly, the Costa Rican Electricity Institute (ICE). The telecommunications regulator SUTEL and the telecommunications vice-ministry within the Ministry of Environment, Energy and Telecommunications (MINAET) are progressively opening the markets in private network and Internet services. Both organizations are struggling with the challenges of starting anew in an emerging wireless market. The mobile wireless market has the necessary regulatory framework in place but is dependent upon a successful auction of frequencies that is expected to take place mid-2010, which would then set the stage for the first new cell phone market entrants in early 2011.

INVESTMENT BARRIERS

¶23. The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Costa Rica. Under the CAFTA-DR, all forms of investment are protected including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Costa Rica on an equal footing with local investors. Among the rights

afforded to U.S. investors are due process protection and the right to receive fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR through an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

¶24. The Costa Rican regulatory environment can pose significant barriers to successful investment in Costa Rica. One common problem is that municipal government and central government institutions at times disagree in their treatment of specific projects, leaving the investor in limbo. Even when dealing only with central government institutions, an investor may follow the technical advice of one institution only to find himself accused of illegal behavior by another institution. Several large investors have faced the related problem that the central government's approach towards a specific project has changed significantly over the years, stranding the investor. Though the law protects land owners against squatters, in practice illegal occupancy of property looms as a threat to investors through coercion and/or illegal changes of ownership on property titles.

¶25. Many U.S. investors cite the slow pace of Costa Rica's judicial system as a barrier. A related concern is the frequent recourse to legal challenges before Costa Rica's constitutional court to review whether government authorities have acted illegally or to review the constitutionality of legislation or regulations. Some U.S. investors believe that such challenges have been used at times to thwart investments or hinder the quick resolution of disputes.

ELECTRONIC COMMERCE

¶26. The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Costa Rica has committed to provide nondiscriminatory treatment of digital products, and not to impose customs duties on digital products transmitted electronically.

OTHER BARRIERS

¶27. Under the CAFTA-DR, Costa Rica agreed to modify its dealer protection regime to provide more freedom to negotiate the terms of commercial relations and to encourage the use of arbitration to resolve disputes between parties to dealer contracts. In December 2007, Costa Rica enacted legislation intended to implement this commitment.

DISTRIBUTION

¶28. We will send a Word document with paragraphs 1 through 27 above via e-mail to the Office of the United States Trade Representative (USTR) as specified in reftel.
BRENNAN